APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT FILED JULY 24, 2007

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 06-31174
Summary Calendar

KANDAYCE WHITEHEAD, individually and as administratrix of the Estate of her Husband, William Lester Whitehead

Plaintiff - Appellant

versus.

ABB LUMMUS GLOBAL BV

Defendant - Appellee

Appeal from the United States District Court
for the Middle District of Louisiana
(No. 3:04-CV-269)

Before JOLLY, DENNIS, and CLEMENT, Circuit Judges.

Appendix A

PER CURIAM:*

The district court dismissed Whitehead's suit against ABB Lummus Global, B.V. ("ABB Lummus") for lack of personal jurisdiction. Whitehead appeals, and we affirm.

I. FACTS AND PROCEEDINGS

Whitehead's husband died in 2003 while working on a project in Algeria. He was employed by Petrofac International, Ltd. ("Petrofac"). Petrofac and ABB Lummus, a Netherlands-based company, were joint venturers in the project. Whitehead, individually and as administratrix of her deceased husband's estate, filed a suit in diversity against Petrofac and the Houston-based corporation ABB Lummus Global, Inc. ("ABB Global"), alleging negligence and wrongful death. After ABB Global was dismissed from the suit (because it was not involved in the Algeria project), Whitehead amended her complaint to include ABB Lummus as a co-defendant.

Petrofac submitted to the jurisdiction of the Louisiana district court but filed a 12(b)(6) motion to dismiss based on the exclusivity provisions of the Louisiana Worker's Compensation Act. *See* LA. REV. STAT. ANN. § 23:1032(A). The district court granted the motion. Subsequently, ABB Lummus moved for dismissal based on lack of personal jurisdiction. The

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

district court granted the motion, and in its ruling, the district court determined that Whitehead had not established that ABB Lummus had minimum contacts with Louisiana because Whitehead had only alleged that an unknown representative, possibly affiliated with ABB Lummus, met with Whitehead's husband in Texas in order to provide him with an airplane ticket to Algeria. Whitehead timely appealed.

II. DISCUSSION

This court reviews *de novo* the district court's dismissal for lack of personal jurisdiction. *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 481 F.3d 309, 311 (5th Cir. 2007). In order for personal jurisdiction to satisfy due process requirements, a plaintiff must establish that the defendant had minimum contacts with the forum state and that the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice. *Id.* Personal jurisdiction may be general or specific. *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 271 (5th Cir. 2006). Where the defendant's contacts are "continuous and systematic, a court may exercise general jurisdiction." *Id.* (internal quotation omitted). Where a defendant's contacts are relatively few but give rise to the suit, then a court may exercise specific jurisdiction. *Id.*

Whitehead essentially makes three arguments on appeal. First, she argues, as she did in the district court, that, because Petrofac consented to jurisdiction, ABB Lummus, as the joint venturer, also consented to

jurisdiction. Whitehead points out that parties to a joint venture are mutually liable for injuries sustained by their venture. Whitehead contends that, from this proposition, it follows that if one party submits to the jurisdiction of the court, then the other party to the joint venture necessarily submits to jurisdiction as well. Second, she claims that an ABB Lummus representative's contact with her husband in Texas suffices to show specific jurisdiction. Third, she maintains that there was general jurisdiction because ABB Lummus and ABB Global are affiliated entities that share employees and share information through a website that can be accessed worldwide.

We reject Whitehead's arguments and agree with the district court. She cites no authority for the proposition that a joint venturer becomes subject to the personal jurisdiction of a federal court solely because another joint venturer consents to such jurisdiction. Additionally, she alleges that a representative provided an airline ticket to her husband, but she does not demonstrate that the representative was from ABB Lummus; this allegation does not confer specific jurisdiction. *See, e.g., Moncrief,* 481 F.3d at 311-12. Finally, ABB Lummus states that, as a company based in the Netherlands, it has no corporate officers, subsidiaries, or property in the United States, nor is it qualified to do business in this country. ABB Lummus also avers that none of its employees reside or are assigned to work in the United States. ABB Lummus does not have continuous and systemic contacts to warrant general jurisdiction. *See Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 374-75 (5th Cir. 1987). "The

plaintiff bears the burden of establishing jurisdiction," *Seiferth*, 472 F.3d at 270, and we hold that Whitehead has not met that burden here.

III. CONCLUSION

The judgment of the district court is AFFIRMED.

APPENDIX B — RULING ON MOTION TO DISMISS UNDER RULE 12(b)(2) FILED SEPTEMBER 21, 2006

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION

NO. 04-269-D-M3

KANDAYCE WHITEHEAD

VERSUS

PETROFAC, LTD., ET AL.

RULING ON MOTION TO DISMISS UNDER RULE 12(b)(2)

This matter is before the court on a motion by defendants, ABB LUMMUS GLOBAL, B.V. ("ABB") to dismiss under Fed. Rule Civ. P. 12(b)(2). Doc. 40. Plaintiff Kandayce Whitehead has filed an opposition and defendant has filed a reply brief. Oral arguments were heard on September 19, 2006. Subject matter jurisdiction is based upon 28 U.S.C. § 1332 and § 1367.

Kandayce Whitehead, individually, and as Adminstratrix of the Estate of William Lester Whitehead, filed this lawsuit on April 26, 2004, against ABB Lummus Global, Inc., among other defendants alleging a wrongful death claim and a survival action. ABB Lummus Global, Inc. (hereafter "Inc.") was

voluntarily dismissed on July 27, 2004. In plaintiff's amended complaint she added ABB Lummus Global, BV (hereafter "BV") as a defendant. Plaintiff alleges that defendants failed to provide for Mr. Whitehead's safety and health care while he was performing work in the desert in Algeria. Mr. Whitehead was employed by Petrofac, Inc. who owned and/or ventured with BV on the Ohanet Field Project where Mr. Whitehead was working when he allegedly suffered from the heatstroke that led to his death. Defendant BV contends that the court lacks personal jurisdiction over the corporation. BV claims it is a Netherlands corporation with its principal place of business in The Hague in that country. Moreover, BV claims that the presence of it's subsidiary or affiliated corporation, Inc. in the United States is insufficient to provide either specific or general jurisdiction.

Defendant BV moves to dismiss the claims under Rule 12(b)(2) for lack of in personam jurisdiction. At trial the plaintiff bears the burden of establishing in personam jurisdiction by a preponderance of the evidence. However, a motion to dismiss for lack of in personam jurisdiction should only be granted when the plaintiff fails to establish a prima facie case. *Wyatt v. Kaplan*, 686 F.2d 276, 280 (5th Cir. 1982). This court must resolve all undisputed facts submitted by the plaintiff, as well as all facts contested in the affidavits, in favor of jurisdiction. *Ramming v. United States*, 281 F.3d 158 (5th Cir. 2001), cert. denied, 536 U.S. 960, 122 S.Ct. 2665, 153 L.Ed.2d 839 (2002).

Appendix B

The Due Process Clause of the Fourteenth Amendment guarantees that no federal court may assume in personam jurisdiction of a non-resident unless the defendant has meaningful "contact, ties, or relations" with the forum state. *Intl Shoe Co. v. Washington,* 326 U.S. 310, 319, 66 S.Ct. 154, 90 L.Ed. 95 (1945). Jurisdiction may be general or specific. Where a defendant has "continuous and systematic general business contacts" with the forum state, *Helicopteros Nacionales de Columbia, S.A. v. Hall,* 466 U.S. 408, 415, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984), the court may exercise "general" jurisdiction over any action brought against the defendant. *Id* at 414, 104 S.Ct. 1868 n. 9. Where contacts are less pervasive, the court may still exercise "specific" jurisdiction "in a suit arising out of or related to the defendant's contacts with the forum." *Id* at 414, 104 S.Ct. 1868 n. 8.

Plaintiff argues that joint venturers consented to in personam jurisdiction when Petrofac failed to raise the defense in its answer and that ABB, as joint venturer necessarily waived this defense as well. Plaintiff fails to cite any authority for this proposition and the court finds that it is without merit.

The only real issue is one of specific jurisdiction since there has been no prima facie showing that BV has continuous and systematic contacts with Louisiana. While BV's subsidiary and/or affiliate Inc. may have continuous and systematic contacts with Louisiana, the use of a national website to link subsidiaries among a larger corporation and/or the occasional loaning of

employees is insufficient to establish the control necessary to impute the action of a subsidiary on the principal corporation. *Hargrave v. Fibreboard Corp.*, 710 F.2d 1154 (5th Cir. 1983). To impute the action of a subsidiary requires "proof of control over the internal business operations and affairs of the subsidiary in order to fuse the two for jurisdictional purposes." *Id* at 1160. Therefore, if ABB's liability stems from the alleged conduct of its subsidiary Inc. the plaintiff must establish central control, which she has failed to do.

A federal court may satisfy the constitutional requirements for specific jurisdiction by a showing that the defendant has "minimum contacts" with the forum state such that imposing a judgment would not "offend traditional notions of fair play and substantial justice." *Int'l Shoe,* 326 U.S. at 316, 66 S.Ct. 154. In *Nuovo Pignone v. STORMAN ASIA M/V,* 310 F.3d 374 (5th Cir. 2002), the Fifth Circuit Court of Appeals consolidated the specific jurisdiction inquiry into a three-step analysis: "(1) whether the defendant ... purposely directed its activities toward the forum state or purposely availed itself of the privileges of conducting activities there; (2) whether the plaintiff's cause of action arises out of or results from the defendant's forum-related contacts; and (3) whether the exercise of personal jurisdiction is fair and reasonable." (citing *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 474, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)). The forum state may create, and this court would be bound to apply additional jurisdiction requirements created by statute, but Louisiana's long-

arm statute extends jurisdiction to the constitutional limit, La. R.S. 13:3201(B); here it is a single inquiry.

Under the first step of the analysis we must identify some act where ABB has established minimum contacts with Louisiana by "purposefully avail[ing] itself of the privilege of conducting activities [here], thus invoking the benefits and protections of its laws. *Hanson v. Denckla,* 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958). A single, purposeful contact may confer jurisdiction. *McGee v. Int'l Life Ins.* Co., 355 U.S. 220, 222, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957). Plaintiff alleges that an unknown representative, possibly affiliated with BV, met with and provided flight information and tickets to Mr. Whitehead in the United States in an effort to employ him in the Ohanet Project in Algeria. However, Ms. Whitehead fails to establish a *prima facie* showing that the representative exists at all, much less that he was representing BV.

The plaintiff fails to establish a *prima facie* showing that this court has in personam jurisdiction over the defendant ABB Glummus Global, BV.

Accordingly, the motion by defendants to dismiss (doc. 40) is hereby GRANTED. Baton Rouge, Louisiana, September 21st, 2006.

s/ James J. Brady
JAMES J. BRADY, JUDGE
MIDDLE DISTRICT OF LOUISIANA